SETTLEMENT AGREEMENT

PRELIMINARY STATEMENT

This agreement is entered into between the Los Angeles County Sheriff's Department (hereinafter referred to as "Department") and Sergeant Donald Wyman, Employee Number [redacted]

RECITALS

The Department and Sergeant Wyman are interested parties in the investigation under Internal Affairs Bureau No. 2138178. Both desire to resolve all disputes arising as the result of that investigation, to avoid litigation and further administrative process upon the terms and conditions hereinafter set forth.

NOW THEREFORE, the Department and Sergeant Wyman for and in consideration of the mutual covenants herein, agree as follow:

1. The Department will, upon execution of this agreement, reduce the fifteen (15) day suspension to a five (5) day suspension pursuant to Internal Affairs Bureau investigation number 2138178, which he accepts without appeal. Sergeant Wyman agrees that he will abide by all the conditions set forth and contained within this agreement.

2. The five (5) suspension days will be considered served effective January 22, 2006 through January 26, 2006. Sergeant Wyman will be reimbursed for the ten (10) suspension days effective January 27, 2006 through February 5, 2006 for back pay and benefits in accordance with the County Code.

3. The Department shall strike Manual of Policy and Procedures section 3-01/025.10 (Unreasonable Force) from Charge Two, as noted in the Department's January 20, 2006 Letter of Imposition. Manual of Policy and Procedures section 3-01/025.30, Use of Firearms and Deadly Force, shall remain as Charge Two. Charge One shall remain the same as noted in the Department's January 20, 2006 Letter of Imposition.

4. Both parties agree and understand that Sergeant Wyman's record will reflect that a five (5) day suspension was imposed and may be used for purposes of demonstrating "progressive discipline"

5. Moreover, Sergeant Wyman agrees to waive all rights in IAB Case Number 2138178, pursuant to Skelly v. State Personnel Board (1975) 15 Cal.3d 194 Cal.Rptr. 14.

6. Sergeant Wyman agrees to waive any and all further administrative or judicial remedies with respect to the discipline as stated herein, including but not limited to the Los Angeles County Civil Service Commission or the Los Angeles County Employee Relations Commission.

7. The parties further agree that this settlement shall not be considered, cited or used in any future dispute between the Department and any other department employee as establishing precedent or past employment practice. This Agreement resolves the dispute between Sergeant Wyman and the Department, and is not to be applied to any other facts or disputes.

8. In consideration of the terms and conditions set forth herein, Sergeant Wyman agrees to fully release, acquit and forever discharge the County, their heirs, successors, assigns, and legal representatives from any and all liability whatsoever for any and all claims arising out of or connected with the employment relationship between the County and Sergeant Wyman concerning the subject matter referred to herein. Additionally, Sergeant Wyman specifically acknowledges that he has not been the subject of discrimination in any form, including but not limited to discrimination based upon age, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status or sex, and that he has no claim against the Department for any such discrimination, whether any such claim is presently known or not known to him.

9. Sergeant Wyman further agrees, with regard to this litigation, to relinquish and expressly waives all rights conferred upon her by the provisions of California Civil Code Section 1542, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

10. The parties agree that this Agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this Agreement.

SETTLEMENT AGREEMENT
SERGEANT DONALD WYMAN, #[redacted]

11. The parties agree that this is the complete settlement agreement and that no other promises have been made by either party. The parties further agree that no changes may be made to this settlement agreement unless both parties reduce the changes to writing and sign them. The "date of execution" and the "effective date" shall be the latest of the dates set forth below.

12. Each party hereto represents and agrees that he/she or it has carefully read and fully understands all of the provisions of the Agreement, and that he/she or it is voluntarily, without any duress or undue influence on the part of or on behalf of any party, entering into this Agreement.

I have read the forgoing Settlement Agreement and I accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences. I further acknowledge that I have been afforded the opportunity to consult with legal counsel prior to signing this agreement.

DONALD WYMAN, SERGEANT
#[redacted]

10/20/04
Date

FOR THE DEPARTMENT:

NEAL B. TYLER, CHIEF
FIELD OPERATIONS REGION I

10/18/06
Date



Leroy D. Baca, Sheriff

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



October 26, 2006

Sergeant Donald Wyman, #[redacted]

Dear Sergeant Wyman:

On January 20, 2006, you were served with a Letter of Imposition, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2138178.

The discipline was modified pursuant to a settlement agreement which was signed on October 20, 2006. Therefore, you are hereby notified that you have been suspended from the position of Sergeant, Item No. 2717A, with this Department for a period of five (5) days. All Departmental records will reflect that you received a five (5) day suspension and that it was served from January 22, 2006, through January 26, 2006.

Pursuant to the settlement agreement, the investigation under File Number IAB 2138178 that was conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures 3-01/050.10, Performance to Standards, on or about April 20, 2004, you failed to perform your duties in a manner which would tend to establish and maintain the highest standards of efficiency in carrying out the functions and objectives of the Department when you failed to adequately plan a response to a crime in progress and/or failed to take supervisory control of the situation and/or failed to notify the station desk personnel, Watch Commander, or on-duty patrol personnel that a crime was in progress and/or failed to request patrol personnel to respond and/or used poor tactics by approaching a suspect who had entered a parked van, instead of using safer tactics of remaining back at a safer distance and having the suspect exit the vehicle and/or approached a suspect vehicle with no radio

for communication with other personnel, and/or approached a suspect vehicle without wearing a protective vest and/or made a decision to grab the door of a forward moving van and/or failed to communicate over the radio that you were approaching a suspect who was wanted for a possible felony crime that had just occurred and/or left your partner in the parking lot and chased after a suspect vehicle and/or failed to put out over the radio that shot had been fired.

2. That in violation of Manual of Policy and Procedures Section 3-01/025.30, Use of Firearms and Deadly Force, on or about April 20, 2004, after firing your pistol at a moving vehicle that was attempting to flee the area and while not in an immediate threat of death or serious physical injury to yourself or others, you used unreasonable and/or excessive deadly force.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

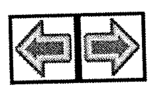
LEROY D. BACA, SHERIFF

Karyn Mannis

Karyn Mannis, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

KM:JK:eq



3-01/050.10 PERFORMANCE TO STANDARDS

Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the functions and objectives of the Department.

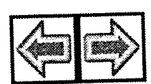
Incompetence may be demonstrated by:

- A lack of knowledge of the application of laws required to be enforced,
- An unwillingness or inability to perform assigned tasks,
- Failure to conform to work standards established for the member's rank or position,
- Failure to take appropriate action on the occasion of a crime, disorder or other condition deserving police attention,
- Absence without leave,
- Unnecessary absence from an assigned area during a tour of duty.

In addition to the above, the following will be considered to be prima facie evidence of incompetence:

- Repeated poor evaluations,
- A written record of repeated infractions of the Department's rules, regulations, manuals or directives.

04/01/96 MPP



3-01/025.30 USE OF FIREARMS AND DEADLY FORCE

The Department's policy on use of firearms and deadly force is:

- Discharging a firearm at another human being is an application of deadly force and must, therefore, be objectively reasonable. Each Department member discharging a firearm must establish independent reasoning for using deadly force. The fact that other law enforcement personnel discharge firearms is not by itself sufficient to justify the decision by a Department member to shoot.
- Department members may use deadly force in self-defense or in the defense of others, only when they reasonably believe that death or serious physical injury is about to be inflicted upon themselves or others.
- Department members may use deadly force to effect the arrest or prevent the escape of a fleeing felon only when they have probable cause to believe that the suspect represents a significant threat of death or serious physical injury to the member or other person(s). If feasible, members shall identify themselves and state their intention to shoot before firing at a fleeing felon.
- The firing of warning shots is inherently dangerous. They should not be fired except under the most compelling circumstances. Warning shots may be fired in an effort to stop a person only when the Department member is authorized to use deadly force, and if the member reasonably believes a warning shot can be fired safely in light of all the circumstances of the encounter.
- Cover fire is defined as target specific controlled fire which is directed at an adversary who poses an immediate and on going lethal threat. This tactic shall only be utilized when the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Department members employing cover fire must establish their reason(s) for utilizing this tactic.

Revised 06/13/05
Revised 05/16/05
04/01/96 MPP

761551N25A - SH-AD (11/90)

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

DATE: April 6, 2005

OFFICE CORRESPONDENCE FILE:

FROM: JOHNNY G. JURADO, COMMANDER
LEADERSHIP & TRAINING DIVISION

TO: PATTI A. MINUTELLO, CAPTAIN
SANTA CLARITA STATION

SUBJECT: **EXECUTIVE FORCE REVIEW COMMITTEE FINDINGS AND RECOMMENDATIONS HIT SHOOTING, APRIL 20, 2004, INVESTIGATION #2138178 (AKA #2116540)**

The purpose of this memo is to notify you of the review committee's findings and recommendations concerning the use of force incident which occurred on April 20, 2004.

The Committee met on April 5, 2005, and consisted of myself and Commanders Kenneth Brazile (Commander of the Department), Eric Smith (Leadership and Training Division) and Robert Binkley (FOR III). The Committee deemed:

- as **Founded** the allegation that Sergeant Donald Wyman [redacted] violated the Department's Manual of Policy and Procedure section(s) 3-01/050.10, Performance to Standards, and

- as **Founded** the allegation that Sergeant Donald Wyman [redacted] violated the Department's Manual of Policy and Procedure section(s) 3-01/025.30, Use of Firearms and Deadly Force, and/or 3-01/025.10, Unreasonable Force, and

- as **Founded** the allegation that Deputy [redacted] violated the Department's Manual of Policy and Procedure section(s) 3-01/050.10, Performance to Standards.

The Committee recommended that Deputy [redacted] be suspended for a period of **ten (10) days** without pay from the position of Deputy. The Committee Recommended that Sergeant Wyman be suspended for a period of **fifteen (15) days** without pay from the position of Sergeant.

The Committee directed the Unit Commander send the C.O.B.R.A. (Career Offenders Burglary Robbery Apprehension) Team to Laser Village II training. The Committee additionally recommended that the Field Operations Training Unit (FOTU) look at developing a training program for supervisory personnel assigned to small specialty teams.

JGJ:KRK:kk

TABLE OF CONTENTS

Los Angeles County Sheriff's Department
Officer Involved Shooting

Report Date:	Bureau/Station/Facility:	Admin. Invest.?	Hit?
03-08-05	SANTA CLARITA VALLEY STATION	☒	☒

Incident Information

URN: 004-05829-0621-053

Date: 04-20-04 Time: 1355

City or Station: SANTA CLARITA VALLEY

Nature of Incident: DEPUTY INVOLVED HIT SHOOTING

Location: 24200 VALENCIA BOULEVARD, VALENCIA

Location Type (*circle one or more*): Backyard, Beach, Business, Freeway, Industrial, Park, (Parking Lot), Residence, Rural, School, Street, Other: ____

Lighting (*circle only one*): Darkness, (Daylight), Other, Street Lights

Weather (*circle only one*): (Clear), Cloudy, Fog, Rain

Distance: 10-15 FT

Incident Type (*circle one or more*): Accidental, Armed Person, Fleeing Suspect, Foot Pursuit, Gun Take Away, (Moving Vehicle), Sniper/Ambush, Startle, Struggle Involved, Traffic Stop, Unarmed Person, Unintentional, Vehicle Pursuit, Warrant Service

Other: ____

Initiated by (*circle only one*): Arrest Warrant, Call, Observation, One Person Unit, (Other), Search Warrant, Two Person Unit

Prior Activity (*circle only one*): (Detective), Inmate Transport, Other, Routine Patrol

Aero Unit? ☐ Canine Unit? ☐

Total # of Shots Fired by Deputy: 1

Total # of Shots Fired by Suspect: 0

Employee Witnesses

Employee #	Last Name	First Name	M.I.	ShiftTime (*circle only one*)	ShiftType (*circle only one*)
[redacted]	FINN	DANIEL		EM PM (Day)	(Regular) Overtime Off Duty
				EM PM Day	Regular Overtime Off Duty
				EM PM Day	Regular Overtime Off Duty

Non-Employee Witnesses

Last Name	First Name	M.I.	Street Address	City	Zip Code	Work Ph	Home Ph

Supervisors

Employee #	Last Name	First Name	M.I	(*circle one or more*)
[redacted]	WYMAN	DONALD		(On Duty), (Present during shooting), Witness to shooting, (Involved in shooting)
				On Duty, Present during shooting, Witness to shooting, Involved in shooting

Watch Sergeant

Employee #	Last Name	First Name	M.I.
	N/A		

Watch Commander

Employee #	Last Name	First Name	M.I.
	N/A		

PSTD Use Only

SH # 211654/0

SH-R-438A rev. 3/07

See Reverse

Officer Involved Shooting

Rollout Information

Arrival Date	Arrival Time	Date Submitted	Date of Recommendation
04-20-05	1600	03-11-05	

Employee #	Last Name	First Name	M.I
[redacted]	MOREJON	ELIER	
[redacted]	HINES	WILLIAM	
[redacted]	JENNINGS	RICKEY	

Shooting / Force Information

Method

(AW) Arwen
(BC) Baton:(Control)
(BI) Baton:(Impact)
(BF) Bodily Fluids
(CN) Canine
(CR) Carotid Restraint
(CH) Choke Hold
(CT) Control Holds:(Control Techniques)
(TT) Control Holds:(Team Takedown)
(TD) Control Holds:(Takedown)
(CE) Chemical
(OC) Chemical Agents (OC Spray)
(TG) Chemical Agents (Tear Gas)
(EX) Explosives
(FH) Firearm (Handgun)
(FR) Firearm (Rifle)
(FS) Firearm (Shotgun)
(FO) Firearm (Other)
(FB) Flashbang
(FL) Flashlight
(OE) Other Weapon: Edged
(OV) Other Weapon: Vehicle
(OB) Other Weapon: Blunt Object
(OO) Other Weapon: Other
(PK) Personal Weapon: Feet/Leg: (Kick)
(PS) Personal Weapon: Feet/Leg: (Sweep)
(PH) Personal Weapon (Hand/Arm)
(PP) Personal Weapon (Push)
(PO) Personal Weapon (Other)
(RS) Resistance
(CN) Restraint Device (Capture Net)
(RH) Restraint Device (Handcuffs)
(HB) Restraint Device:Hobble (Legs Only)
(TP) Restraint Device:Hobble (TARP)
(RE) Restraint Device: REACT Belt
(SP) Sap
(SH) Shield
(SG) 37mm Stinger
(SB) Sting Ball
(ST) Stun Bag
(TR) Taser
(UC) Uncooperative

Type of Injury

(AB) Abrasion
(BR) Bruise
(BU) Burn
(CP) Complaint of Pain
(CO) Concussion
(DH) Death
(DI) Dislocation
(DB) Dog Bite
(FR) Fractures
(GS) Gunshot
(HB) Human Bite
(LC) Lacerations
(ND) Nerve Damage
(OD) Organ Damage
(PA) Paralysis
(PW) Puncture Wound
(SD) Soft Tissue Damage
(ST) Sprain/Twists
(UN) Unconscious
(RM) Refused Med Treatment
(NN) NONE

Body Part Injured

(AD) Abdomen
(AK) Ankle
(AR) Arm
(BK) Back
(BT) Buttocks
(CH) Chest
(EL) Elbow
(FA) Face
(FE) Feet
(FI) Fingers
(GE) Genitals
(GR) Groin
(HD) Hand
(HE) Head
(HI) Hip
(IN) Internal
(KN) Knees
(LE) Leg
(NK) Neck
(SH) Shoulder
(WR) Wrist

Brand

(AK) AK-47
(BN) Benelli
(BR) Beretta
(BW) Browning
(CH) Charter Arms
(CO) Colt
(DA) Davis Industries
(GL) Glock
(HA) Harrington & Richardson
(HI) Hi Standard
(HK) H & K
(IT) Ithica
(IV) Iver Johnson
(JE) Jennings
(LO) Lorcin
(LU) Luger
(MA) Marlin
(MO) Mossberg
(NC) NCI aka SKS
(NA) North American
(NO) Norinco
(RA) Raven
(RM) Remington
(RG) RG
(RI) RGI
(RO) Rossi
(SW) Smith & Wesson
(SR) Sturm Ruger
(ST) Sterling
(TA) Taurus
(WE) Weatherby
(WN) Winchester
(US) US Government
(YY) Handmade (Inmate)
(XX) Homemade (Non-Inmate)
(ZZ) Other Brand

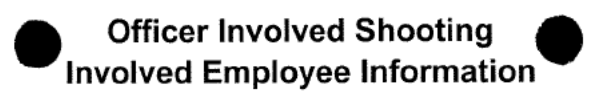
Caliber

(9) 9 mm
(10) 10 mm
(12) 12 guage
(20) 20 guage
(21) .22-250
(22) .22 caliber
(23) .223 caliber
(24) .243 caliber
(25) .25 caliber
(30) .308 caliber
(35) .357 caliber
(36) 30-60 caliber
(38) .38 caliber
(40) .40 caliber
(41) .410 guage
(44) .44 caliber
(45) .45 caliber
(50) 50 mm
(SL) Slug
(WW) Other caliber

FORCE APPLIED *(one code per block)*

Used By (E# or S#)	Used Against (E# or S#)	Method (Code)	Brand (Code)	Caliber (Code)	Authorized Weapon? (Y/N)	Authorized Ammunition? (Y/N)	Type of Injury (Code)	Body Part (Code)
S#1	E#1	OV	ZZ	--	-	-	NN	
E#1	S#1	FH	BR	9	Y	Y	SD	BK

See Front Side


Officer Involved Shooting
Involved Employee Information

URN: 004-05829-0621-053

Involved Employee

E 1

Employee # [redacted]	Last Name WYMAN	First Name DONALD	M.I.
Sex: M Race: W	Rank: SERGEANT	Unit Assignment: SANTA CLARITA VALLEY	Work Assignment (Unit #, Module, etc.): DETECTIVE-SERGEANT
ShiftTime (*circle only one*): EM PM (Day)	ShiftType (*circle only one*): (Regular) Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case # / Interviewed? ☒
Hrs of sleep prior to shooting: 7	Duty Time (hrs): [redacted]	Clothing (*circle only one*): (Plain Clothes no Vest) Raid Jacket w/ Vest Plain Clothes w/ Vest Uniform no Vest Raid Jacket no Vest Uniform w/ Vest	Other Factors:
Age: [redacted] Height: 508	Weight: 165		
Range Qualification Date: [redacted]	PPC Qualification Date: [redacted]	Laser Training Date: [redacted]	
Certified with Weapon Used? [redacted]	Patrol Certification? [redacted]	Certification Unit: [redacted]	Prior Shootings? ☒ Number of Prior Shootings: 2
Field Training Officer Emp # [redacted]	Last Name [redacted]	First Name [redacted]	M.I.
Field Training Officer Emp #	Last Name	First Name	M.I.

E ___

Employee #	Last Name	First Name	M.I.
Sex: Race:	Rank:	Unit Assignment:	Work Assignment (Unit #, Module, etc.):
ShiftTime (*circle only one*): EM PM Day	ShiftType (*circle only one*): Regular Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case # / Interviewed? ☐
Hrs of sleep prior to shooting:	Duty Time (hrs):	Clothing (*circle only one*): Plain Clothes no Vest Raid Jacket w/ Vest Plain Clothes w/ Vest Uniform no Vest Raid Jacket no Vest Uniform w/ Vest	Other Factors:
Age: Height:	Weight:		
Range Qualification Date:	PPC Qualification Date:	Laser Training Date:	
Certified with Weapon Used? ☐	Patrol Certification? ☐	Certification Unit:	Prior Shootings? ☐ Number of Prior Shootings:
Field Training Officer Emp #	Last Name	First Name	M.I.
Field Training Officer Emp #	Last Name	First Name	M.I.

E ___

Employee #	Last Name	First Name	M.I.
Sex: Race:	Rank:	Unit Assignment:	Work Assignment (Unit #, Module, etc.):
ShiftTime (*circle only one*): EM PM Day	ShiftType (*circle only one*): Regular Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case # / Interviewed? ☐
Hrs of sleep prior to shooting:	Duty Time (hrs):	Clothing (*circle only one*): Plain Clothes no Vest Raid Jacket w/ Vest Plain Clothes w/ Vest Uniform no Vest Raid Jacket no Vest Uniform w/ Vest	Other Factors:
Age: Height:	Weight:		
Range Qualification Date:	PPC Qualification Date:	Laser Training Date:	
Certified with Weapon Used? ☐	Patrol Certification? ☐	Certification Unit:	Prior Shootings? ☐ Number of Prior Shootings:
Field Training Officer Emp #	Last Name	First Name	M.I.
Field Training Officer Emp #	Last Name	First Name	M.I.

Officer Involved Shooting Suspect Information

URN: 004-05829-0621-053

Suspect Information

S 1

Last Name RUIZ		First Name MARCELO	M.I. A.
AKA Last Name		First Name	M.I.
Sex: M Race: H	Street Ad[redacted]	City [redacted]	[redacted] Zip Code:
Work Pho[redacted]	Home P[redacted] / Social Security[redacted]		Driver's License[redacted]
Age: 39 D.O.B. 02-10-64	Height: 506 Weight: 165	FBI # [redacted]	CII # [redacted]
Booking # 8095-289	Primary Charge: 245(C) PC	Secondary Charge: 459 PC	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☒	Apprehended? ☒	Mental Illness? ☐	Criminal History? [redacted]
Vehicle Make TOYOTA		Model: SIENNA	Year: 2001

S__

Last Name		First Name	M.I.
AKA Last Name		First Name	M.I.
Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone: / Social Security #:		Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make		Model:	Year:

S__

Last Name		First Name	M.I.
AKA Last Name		First Name	M.I.
Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone: / Social Security #:		Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make		Model:	Year:

S__

Last Name		First Name	M.I.
AKA Last Name		First Name	M.I.
Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone: / Social Security #:		Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make		Model:	Year:

See Other Side

INTERNAL AFFAIRS BUREAU
INVESTIGATIVE NARRATIVE
IV 2138178
SH 2116540
URN: 004-05829-0621-053

Subjects: **WYMAN, Donald, SERGEANT [redacted]**
SANTA CLARITA VALLEY STATION
Field Operation Region III

FINN, Daniel, DEPUTY SHERIFF [redacted]
SANTA CLARITA VALLEY STATION
Field Operation Region III

Date: **April 20, 2004**

Location: **24200 Valencia Boulevard, Valencia "Kohl's"**

Investigator: **Sergeant Elier Morejon**

Case Synopsis:

This case pertains to allegations that Sergeant Donald Wyman violated Policy Sections *3-01/050.10 Performance to Standards* and 3-01/025.10 *Unreasonable Force*. Deputy [redacted] violated Policy Section *3-01/050.10 Performance to Standards.*

> **IAB NOTE:** ***The entire incident involving Sergeant Wyman's shooting was captured on a surveillance camera located in the parking lot of Kohl's Department Store. The tape will be kept as part of this investigation.*** **See Exhibit F - Video Tape**

On April 20, 2004, Sergeant Wyman and Detective Finn were returning to Santa Clarita Station from a luncheon in the City of Valencia when Detective Finn received a phone call on his cell phone from Kohl's Loss Prevention Officer [redacted] Sergeant Wyman and Detective Finn are members of the Santa Clarita "COBRA" Team. (Career Offender Burglary Roberry Apprehension) Sergeant Wyman and Detective Finn were wearing green Polo style shirts with the Sheriff's star in gold lettering on the front left breast area. They were wearing black pants and a pancake holster with their department issued Beretta 9mm semi-automatic pistol.

Detective Finn was told by Witness [redacted] that she was watching two individuals inside of Kohl's who she recognized as possible suspects from a previous burglary. Witness [redacted] told Detective Finn that Detective Henning was handling the prior thefts. Witness [redacted] told Detective Finn

that the suspects were entering the dressing rooms and concealing Levi 501- Jeans. Detective Finn told Witness [redacted] that he would respond to the store and for her to keep monitoring the suspects.

Detective Finn hung up with Witness [redacted] and immediately called Detective Henning on his cell phone and advised him of the circumstances. Detective Henning is also a member of the "COBRA" Team. Detective Finn told Detective Henning that he and Sergeant Wyman were going to take a position of surveillance on Del Monte Street just south of Kohl's and he wanted him to come in off of Valencia Boulevard and take a position of surveillance to the north of the store.

> **IAB NOTE:** ***Detective Finn's response to the reason he did not request station patrol units as backup was, "Cause that's not the way we did it. It's not something that we thought was necessary at the time." Sergeant Wyman's response to the same question was, "And, you know, I was pretty confident we could handle, you know, a 459 suspect or a shoplifter. Same thing in my book."***

Detective Finn and Sergeant Wyman arrived at Kohl's and parked their unmarked unit just to the south of the front entrance on Del Monte Street. Detective Finn re-contacted Witness [redacted] via cell phone and they spoke about the suspects actions inside the store. Approximately three to four minutes after arriving on Del Monte Street, Detective Finn was told that one of the suspects was exiting the store. Witness [redacted] told Detective Finn that as the suspect exited the store the alarm sensors had been activated, indicating he had stolen merchandise in his possession.

Detective Finn and Sergeant Wyman drove their unmarked vehicle into the parking lot and approached the suspect in an attempt to detain him prior to him entering a vehicle. The suspect ignored Sergeant Wyman and Detective Finn's orders to stop. The suspect was able to enter a van which was parked facing north in the parking lot just east of the front entrance. Sergeant Wyman and Detective Finn approached the van and ordered the suspect to put his hands up and get out of the van. The suspect refused, started the van and started to drive forward. Sergeant Wyman, who was at the drivers door, grabbed the door handle with his left hand. The van moved forward and to the left as Sergeant Wyman let go of the door handle. Simultaneously, as Sergeant Wyman released his grip of the door, he raised his pistol with his right hand and shot once at the suspect.

> **IAB NOTE:** ***Sergeant Wyman's response to the reason he shot at the suspect was, "I felt I was gonna get slammed into the car, which was in the next row over in front of him to the left. I felt that's the way I was going. I could see the car out of the corner of my eye. I knew it was there when we walked up. And I thought I was gonna get either slammed into that and -- or drug under the wheels of his car."***

> **IAB NOTE:** ***The bullet went through the drivers side rear window and struck the sliding door handle. A fragment of the bullet struck the suspects back but did not penetrate.***

The suspect drove through the parking lot and eventually out onto Valencia Boulevard. As the suspect drove away, Detective Finn chased the van on foot. Sergeant Wyman returned to his vehicle and started to follow the suspect through the parking lot. Sergeant Wyman followed the vehicle out onto Valencia Boulevard leaving Detective Finn in the parking lot.

> **IAB NOTE:** ***Neither Detective Finn or Sergeant Wyman were wearing protective vests at the time of this incident. Detective Finn chased the van through the parking lot and was eventually split from his partner without having a radio in his possession.***

The suspect drove approximately on quarter of a mile or less and pulled over for Sergeant Wyman who had activated his red lights and siren. Detective Henning arrived in the parking lot to see Detective Finn chasing the van on foot. Detective Henning picked up Detective Finn and they responded to Sergeant Wyman's location. The suspect was taken into custody without further incident. Detective Finn and Detective Henning along with several other Santa Clarita Station units responded back to Kohl's where they arrested two additional suspects for burglary. **Refer to Exhibit A - Homicide Book for the facts surrounding the hit shooting.**

The facts of the hit shooting were presented to the Executive Shooting Review Board by Homicide Bureau on May 18, 2004. As a result of that presentation, the Executive Shooting Review Board requested an Internal Affairs Bureau investigation naming Sergeant Wyman as a Subject with the alleged policy violation of *Performance to Standards and Unreasonable Force.* On February 8, 2005, Captain Patti Minutello requested that Detective [redacted] be added and named as a subject to the investigation for alleged policy violation of *Performance to Standards.*

SUBJECT INTERVIEWS

On February 23, 2005, **Sergeant Donald Wyman** was interviewed by Internal Affairs Bureau Sergeants Elier Morejon and William Hines. See Subject Interview for transcribed interview.

On February 23, 2005, **Deputy Daniel Finn** was interviewed by Internal Affairs Bureau Sergeants Elier Morejon and William Hines. See Subject Interview for transcribed interview.

SWORN WITNESS INTERVIEWS

DETECTIVE CHRIS HENNING [redacted]

Detective Henning said he received a phone call on his cell phone from Detective Finn. Detective Finn told him that he had received a phone call from Witness [redacted] informing him that there were possible burglary suspects inside of Kohl's. Detective Finn told him that he and Sergeant Wyman were responding to Kohl's in minutes and asked him to respond via the Valencia Boulevard entrance.

Detective Henning responded and as he reached the entrance to the parking lot of the Kohl's shopping center, he saw Detective Finn on foot, running westbound, toward the Valencia Boulevard entrance. Detective Henning said he then heard Sergeant Wyman on the radio advising that he was in pursuit of the suspect vehicle. Detective Henning said that Detective Finn got into his car and they drove to Sergeant Wyman's location on the corner of Valencia Boulevard and McBean Parkway. Detective Henning assisted in taking the suspect into custody. Detective Henning said as they were assisting Sergeant Wyman, Detective Finn received another phone call on his cell phone from Witness [redacted] He was informed of two additional suspects who were still inside Kohl's. Detective Henning and Detective Finn, along with several assisting units, responded and apprehended two additional suspects for burglary.

CIVILIAN WITNESS INTERVIEWS

[redacted]

The following interviews were conducted by Homicide Detectives Graves and Brown. The interviews were taped recorded and the following is a synopsis of the interviews.

On 04-20-2004 at 1732 hours, [redacted] was interviewed in the Operation Lieutenant's Office at Santa Clarita Sheriffs Station. Present during the interview were Sergeant William Hines from Internal Investigations Bureau, Deputy District Attorney Gilbert S. Wright and District Attorney Senior Investigator [redacted]

Witness [redacted] stated that she is the Loss Prevention Supervisor at the Kohl's Department Store in Valencia. She said that her basic job is to prevent the loss of merchandise from the store. They do this job by monitoring potential thieves. She said today she and [redacted] recognized some people that came into the store. She said [redacted] called her into the security area and advised her that the "Levis guys" were in the building. She explained that the "Levis guys" were a group or ring of thieves that come into the store wearing "girdles." This ring would wrap jeans from the store around their waist and legs and then shoplift the Levis-501 jeans. She stated that she has many pictures of these suspects on file.

Witness [redacted] said when she arrived in the Loss Prevention Office, [redacted] was on the cameras monitoring the suspects. He advised her that he noticed two different suspects in the store. One of the suspects was already in one of the fitting rooms, and the other suspect was in the main store area. He directed her attention to the suspect in the main store area and she saw that he was wearing baggy jeans. [redacted] told her that the suspect in the fitting room was wearing shorts. She watched the security monitors and observed the suspect wearing the baggy jeans looking around the store. She said she observed his eye movement and saw that he was looking to see if anyone was around.

Witness [redacted] said she relieved [redacted] on the cameras and [redacted] stood and waited. She said they were unsure on what action to take. She said normally they would "burn" the suspects. She explained that when they "burn" a suspect they confront the suspect inside the store and force them

to abandon the merchandise they are stealing. Their intent is to recover the merchandise above making any kind of arrest. She added that most of the time they don't have all of the elements of a crime. She said they have to witness the suspect enter the store, select the merchandise, conceal the merchandise, keep them in constant observation and then have them exit the store.

Witness [redacted] stated she was watching the monitors and she saw the suspect wearing the shorts exit the fitting room and she watched the suspect wearing the baggy pants (later identified as Suspect Ruiz) enter the fitting room. At this point she said she called Detective Finn and explained to him the situation. She added that she had previously talked to Deputy Henning and advised him concerning the Levis thefts. She told Detective Finn over the telephone what was occurring in the store. She told him that one of the suspects was out of the fitting room and one was inside the fitting room. Detective Finn told her that he would be right outside the store.

Witness [redacted] said she watched the suspect wearing the shorts go into the main store area and get more jeans, while the other suspect wearing the baggy jeans came out of the fitting rooms. The suspect wearing the baggy, now bulging, jeans exited the store, setting off the "EAS" alarm. She explained that the exit alarm is set by "stickers" concealed in the merchandise, primarily in the jeans, in the store. She said the alarm sounds at the exit and in the Loss Prevention Office.

Witness [redacted] said the suspect exited the store while she was monitoring him. She added that Detective Finn heard the alarm over the telephone connection they were continuing. She continued to monitor the cameras and saw the second suspect go back into the fitting room with jeans. She said she had one camera on the suspect in the fitting room and another camera on the suspect as he walked out of the store. She said she followed the suspect outside of the store as he walked into the parking lot. At this point Witness [redacted] explained that she had four monitors in the Loss Prevention Office. She said she remotely guided the camera and followed the suspect in the parking lot. She watched him approach and then enter a silver van parked in the lot. She informed Detective Finn that the suspect was getting into a silver van and Detective Finn disconnected his phone, ending their conversation. She said she watched the monitor and saw the deputies approach the van. She saw one of the deputies hit the window. She said the deputy tried to open the door as the van started to "take off." She said the van took the deputy with it and jump over a curb or planter. She watched the van drive through the parking lot, attempting to escape. She saw an unmarked unit follow the suspect out of the parking lot.

Witness [redacted] said she also continued to monitor the second suspect, and noted that they now had a third suspect inside the store. She also recognized this third suspect from the previous thefts. This third suspect walked into the fitting rooms as the second suspect came out of the fitting rooms. She again stated that the second suspect had already walked in the fitting rooms with a stack of jeans and he was now exiting the fitting rooms and he was not holding the stack of jeans. This third suspect exited the fitting room she noted that this suspect's pants were "really tight" and she could

see a "bulge in his pants."

Witness [redacted] told [redacted] that they needed to recover the jeans and she directed him to "burn" the suspects. [redacted] went to the front of the store, carrying his radio, and was immediately recognized by the suspects from previous encounters with the suspects. When the suspects saw [redacted] they walked back to a different fitting room stall. The suspects apparently dumped the "Levis," and left them in the fitting room stall. She added that the cameras don't actually monitor inside the fitting room stalls themselves, only outside and in the store and parking lot. [redacted] waited outside the store and was present when one of the suspects was detained outside the store. The third suspect, after being identified by Witness [redacted] was located in the store and detained. The merchandise was recovered and taken to the Loss Prevention Office.

Witness [redacted] explained that she was very nervous when she saw the deputy knocking on the window. As the suspect started to "take off," she thought the suspect might have a gun. She did not know what the suspect was trying to do, having almost ran over one of the deputies. She became very shaky and nervous and could not tell from watching the monitor if the deputy fired his gun. Witness [redacted] said from her observations of the suspects actions she did think the suspect was going to run over the deputy.

[redacted]

On 04-20-2004 at 1753 hours, [redacted] was interviewed in the Operations Lieutenant's Office at Santa Clarita Sheriff's Station. Present during the interview were Sergeant William Hines from Internal Investigations Bureau and Deputy District Attorney Gilbert S. Wright. Witness [redacted] stated he is employed by Kohl's Department Store as a Loss Prevention Agent.

Witness [redacted] said that Kohl's Department Store in Valencia "constantly gets hit" by a known group of individuals. They, the Loss Prevention staff, have monitored and recorded this group of thieves on previous occasions in the store, but they have not identified them as of yet. Today he saw one of this group come into the store, and he noted that the suspects used the same "MO" as the priors. He explained that they (group of suspects) enter the store, grab a shirt off a display without any regards for the price or size of the shirt. The suspects then go directly to the jeans display where they grab a stack of jeans. The suspects drape the shirt over the stack of jeans, in order to act inconspicuous with the amount of jeans they enter the fitting rooms with. This suspect is usually the "set up man." The set up man goes into the fitting room stall, removes all of the tags, and then folds them in a "certain way" to make them easier to hide. A second suspect then enters the fitting room stall and puts the jeans "on his person." He has seen the suspects with the jeans wrapped around their legs, and they wear a girdle, stuffing the jeans down their pants or inside the girdle.

Witness [redacted] stated that this was what he observed the first suspect doing today. The suspect

selected the jeans and entered the fitting rooms. He also saw the second suspect enter the fitting rooms. After he made these observations, [redacted] made the telephone call to Detective Finn. She told the detective about the ongoing situation. Detective Finn stated he would respond the location.

Witness [redacted] said he and Witness [redacted] continued to monitor the suspects from the Loss Prevention Office. He said he did not go into the store area because the suspects would recognize him from previous encounters. He added that in the past he has always confronted the suspects inside the store and deterred them from completing the theft of the merchandise. He said this time they wanted to get the suspect, because they had watched them enter the store, select the merchandise, and go into the fitting room. He said they actually started recording the suspect while he was in the men's department as he proceeded to the jeans display. Initially he was using the monitoring equipment to follow the suspect, but was relieved by Witness [redacted] at the end.

Witness [redacted] described the suspect as a member of a South American gang, in his late twenties or early thirties, wearing a navy blue thermal shirt and baggy jeans. He said the jeans were baggy when he first observed this suspect entering the fitting room. When he exited the fitting rooms he saw that the suspect's jeans were tight from what he believed were the jeans wrapped around his legs. This suspect exited the store and set off the "EAS" alarm. Witness [redacted] explained that the "EAS" stands for Electronic Article Surveillance. He said EAS stickers or tags are put into clothing to deter theft. He added that because they have such a big problem with theft of the jeans they put one inch by one inch stickers "up and down the legs" of the jeans.

Witness [redacted] continued stating that the suspect walked out of the store and set off the audible alarm on the EAS at the doors as he exited the store. Witness [redacted] was in the office monitoring the suspect as he exited the store. He said he watched the suspect approach the van and he-was exiting the office when he heard Witness [redacted] utter an exclamation. He turned around and viewed the van, on the monitor, driving with the deputy chasing it. He did see one deputy pound on the door and window of the van, at which time he started to exit the office. He saw the suspect being chased and he said he saw "civilians get under parked cars." He also stated that he did not see the deputy shoot at the suspect in the van.

SUSPECT INTERVIEW

MARCELO RUIZ MH/39

Suspect Ruiz said he entered the store, Kohl's, for some necessities. He admitted that he took six or seven pants from the store. He said when he came out and got into his car, "a person" put a gun to his head." He described the gun as a revolver. He reiterated that he went into the store and grabbed a couple pairs of pants and walked out of the store without paying for the pants. He walked to his vehicle and got into his "truck." After he was inside his vehicle a "gentleman" came up and

put a gun to his head.

Suspect Ruiz was asked to describe the "gentleman" who put the gun to his head and he answered that he did not know who the man with the gun was. He denied observing that the deputies stopped their unmarked vehicle near his vehicle. He also denied that the deputies called for him to stop or come to them before he actually entered his vehicle. He said he did not remember the deputies stopping near his vehicle and he did not remember the deputies calling to him. At this point in the interview Suspect Ruiz referred to the "gentleman" as the officer with the gun, contradicting his first statement that he did not know who the person was that was pointing the gun at him. Detectives confronted Suspect Ruiz with this contradiction and he denied that he recognized the officers as members of law enforcement. He added that all he knew is "he was wearing green, a green shirt." He said he did not see the large gold badge on the deputy's shirt. He explained that he was "so nervous" all he saw was the gun.

Suspect Ruiz said he was nervous and he took off in his car and stopped when he saw the lights. He said he did not remember hitting or running over anything. He denied running over the planter curb with his vehicle. He said that he just drove away and stopped when he saw the lights. He was asked if he opened the driver's door as he pulled away from the officers, or if it was pulled open by the deputy? He said that "nobody opened the door." He said the door of his car did not open after he got in and drove away. He said he did open the door and get out when he was finally stopped after driving away. He added that he got into his car turned it on, and noticed somebody with a gun, and with his nerves, he just took off.

Detectives asked Suspect Ruiz if he was scared or nervous because he was involved with stealing from the store. He replied that he was scared because "he put a revolver to my head." He again admitted that he stole some jeans from the store. Suspect Ruiz held up his hands and raised six fingers and said he stole five or six jeans. Suspect Ruiz claimed he was by himself, and did not have anyone with him. Detectives informed him that two more suspects were arrested-at the store, and he again claimed that he was alone.

Suspect Ruiz told Detectives that he had seven hundred dollars on him when he went into the store. Detectives asked him why he did not pay for the clothes he stole and he replied that he didn't pay because they shot at him. He said it was not his intention to steal, and he did not think it was something bad. Detectives asked him if he thought it was okay to steal and he answered that he was not with all of his "sense." Detectives asked him if he was under the influence of drugs or alcohol or if he had a mental illness. He stated he was not on drugs, he was not drunk, and he is not crazy. He said he was just nervous.

Detectives confronted Suspect Ruiz with his admission that he stole the clothes and he was nervous because he was committing a crime. Suspect Ruiz mumbled that he did not know, he just had problems. He admitted that he got the stolen items out of the store under his clothes, "in between" his clothes. He admitted that he concealed the stolen clothes on his legs and body.

Detective Brown asked suspect Ruiz if he tried to run over the deputy because he was nervous and he denied trying to run over the guy with the gun. He denied trying to run over the deputy and added that "they were up on his side." He again said he got in his car and "the guy put the gun on the outside." Detectives asked him how many guys put their guns on him? He answered that there was one on each side of his car. He also denied pulling his car to the left when he pulled way. He added that he 'just went through the street."

Suspect Ruiz was asked if he remembered setting the store alarms off when he exited the store. Suspect Ruiz quickly answered, "Yes, that's when I got nervous." He also denied ever being arrested before.

MISCELLANEOUS

On 04-22-2004, Detective Scott Gibson, Santa Clarita Sheriffs Station Detective Bureau, filed Felony Burglary, 459 P.C. charges on Suspect Ruiz at Newhall Municipal Court District Attorney's Office under complaint number PA046566. Detective Gibson also filed burglary charges on Gerardo Barrera MH/31 and Luis Brunetty MH/23, the apparent crime partners of Suspect Ruiz.



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
CURT LIVESAY• Chief Deputy District Attorney
CURTIS A. HAZELL • Assistant District Attorney

RICHARD D. DOYLE • Director

December 14, 2004

Captain Raymond Peavy
Los Angeles County Sheriff's Department
Homicide Bureau
5747 Rickenbacker Road
Commerce, California 90040

Dear Captain Peavy:

Re: J.S.I.D. File No: 04-0353
L.A.S.D. File No: 004-05829-0621-053

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 20, 2004, non-fatal shooting of Marcelo Ruiz by Los Angeles County Sheriff's Sergeant Donald Wyman. We have concluded that there is insufficient evidence to prove that Sergeant Wyman acted unlawfully.

The following analysis is based on reports, a video tape, and materials contained on compact discs, prepared by the Los Angeles County Sheriff's Department, Homicide Bureau, and submitted to this office on July 27, and September 8, 2004 by Sergeant Rick Graves. Compelled statements were not provided or requested from Homicide Bureau. The District Attorney's Command Post was notified of the shooting on Tuesday, April 20, at 3:00 p.m. Deputy District Attorney Gilbert Wright and Senior Investigator [redacted] responded to the scene of the shooting and were given a briefing and a 'walk-through' of the scene.

FACTUAL ANALYSIS

On April 20, 2004 Loss Prevention Officers (security agents) for Kohl's Department Store in Valencia observed, via store monitors, Gerardo Barrera, a member of a known shoplifting team dubbed the "Levis Guys," take clothes from the display rack and walk to the dressing room where he was out of view for several minutes. They then saw Marcelo Ruiz, in baggy clothes and standing near the dressing room, enter the dressing room after Barrera exited without any merchandise. When Ruiz emerged from the dressing room his pants were no longer baggy, but appeared to be tighter as if he stuffed his clothing with merchandise. Security personnel were aware that the "Levis Guys" wear girdles and generally shoplift Levis 501 jeans by wrapping them around their waist and legs.

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Ruiz exited the store and walked into the parking lot. He set off the Kohls' security alarm as he exited. The alarm was audible. Barrera repeated the actions above using a third individual. Security personnel telephoned the nearby Santa Clarita Sheriff's Station about what was occurring. Sheriff's personnel there had been previously apprised of the "Levis Guys." Sergeant Wyman and other deputies immediately responded.

Sergeant Wyman and Detective Daniel Finn approached Ruiz when he was already in his van. Sergeant Wyman shot at Ruiz as Ruiz drove away. Kohls' video taped the shooting incident with their parking lot video camera. The van eventually stopped and Ruiz was taken into custody. Both Wyman and Finn were in less formal uniforms but were wearing pull over shirts that displayed sheriff's badges. Their guns and their department issued badges were on their belt buckle. They were driving in an unmarked car as well. Ruiz was unarmed.

Ruiz was taken to Henry Mayo Hospital and was examined by Dr. Bill Cryer. Ruiz had two small ½ inch lacerations on his back near his shoulder blade. No bullet or fragments were found in his wounds, but Dr. Cryer did find what looked like small pieces of glass in the wounds. He was unable to determine the exact mechanism of the injury. Ruiz' clothing was given to investigators. Among his articles of clothing were a white girdle and elastic leg supports.

The District Attorney's Office in San Fernando filed burglary charges against Ruiz, Barrera, and Luis Brunetty on April 22, 2004 in case number PA046566. Barrera and Brunetty pled guilty in June. As of November 10, 2004, Ruiz was awaiting trial and motions.

Detective Finn wrote a report that indicated when he and Wyman arrived at the shopping center they were told by Kohl's security that one of the suspects, Ruiz, was exiting the store with stolen merchandise concealed under his clothing. They observed Ruiz "exit and walk" through the parking lot. The deputies stopped their vehicle, got out, and identified themselves as Sheriff's deputies, as Ruiz was getting in his van. Wyman approached the driver's side while Finn approached the passenger's side of the van. Both deputies ordered Ruiz out of the van at gun point. Ruiz looked directly at Finn and drove forward. Sergeant Wyman grabbed the driver's door and tried to open it, hoping to take Ruiz out of the van. Ruiz accelerated and steered the vehicle to his left directly toward a parked car in the opposite parking stall. Detective Finn then wrote, "Sgt. [sic] Wyman, believing that he was going to be dragged into the parked car or knocked down and run over by the suspect's vehicle, was in fear for his life and fired one round from his service weapon at [Ruiz]." Ruiz then steered his vehicle to the right, drove over a raised, concrete planter-curb and went eastbound through the parking lot. Finn ran after Ruiz on foot and Wyman went back to the patrol vehicle to request assistance.

In Finn's statement to Sheriff's investigators on April 20th, he does not indicate that he and Wyman identified themselves as Sheriff's deputies. He said that he and Wyman pulled behind Ruiz as he walked between two vehicles. They got out of their vehicle and told Ruiz to stop, who looked in their direction but continued to open the van's door and get inside the driver's seat. Finn then explained that when Ruiz drove forward and to the left, he believed that Ruiz was trying to maneuver the van's right tire around a triangular shaped planter that had a raised curb. Finn said that there was no vehicle parked directly in front of the van, just the previously described car that was parked opposite and to the left. At that point, Finn heard Wyman fire one round. Finn backed off. Finn believed that he was dealing with a shoplifter, and not a more dangerous suspect.

Sergeant Wyman told investigators that he and Finn were going to monitor the parking lot and see where the suspects would go after they exited Kohls. They wanted to see if the suspects went to an awaiting vehicle, possibly being driven by another suspect. They also wanted to know if the vehicle contained more stolen property. Their plan was to block any vehicle the suspect (or suspects) went to. When they saw Ruiz walk over to his vehicle they parked their unmarked unit somewhat behind it, thinking Ruiz would be blocked in. At that point they were unaware that there was no vehicle parked directly in front of Ruiz' van. Ruiz was just starting to get into his van when Wyman was exiting his car. He told Ruiz to stop, but Ruiz ignored him and continued to get in his vehicle. Wyman came up to the driver's side window, pounded on it, and told Ruiz to get out of the car. Ruiz looked at him, started his car and then looked back at Wyman. Wyman grabbed the door handle as his pistol was "out of its holster." The driver's door came open as Ruiz drove off. Wyman did not know if he opened the door or if Ruiz opened it. Wyman was aware of a car directly to the front and to the left of him. He was hanging onto the door and thought to himself, "Aw man, I'm going to fall and slam under this tire (possibly loose his footing) or slam into this [other] car." Wyman let go of the handle and fired one round. Wyman said that he never had a chance to consider if Ruiz was armed or not. He said that when he fired his gun he was standing and moving to his left as a result of the momentum of being dragged. He recalled that the large window behind the driver's seat was shattered after he shot his gun.

Investigators told Wyman that the events in the parking lot captured on video appeared to be occurring "somewhat simultaneous" as opposed to one thing after another as Wyman described. Wyman agreed, and said that this event was occurring all at once and his thoughts and actions seemed like a split second.

Wyman said that when he eventually caught up with Ruiz again, just outside of the parking lot, it appeared that Ruiz was making large furtive movements and "stashing all kinds of stuff." Wyman also thought that Ruiz may have had a gun after all. Ruiz however, eventually got out of the van with his hands raised and laid on the ground.

He ignored the deputies' orders regarding surrendering in a step by step manner. Wyman handcuffed Ruiz and another deputy looked under his shirt and noticed a mark or welt on his back.

Thirty-nine year old Marcelo Ruiz spoke to investigators with the assistance of a Spanish translator after waiving his Miranda rights. He admitted that he took six to seven pants from Kohls without paying for them. The clothes were stashed "in between his clothes" (under his clothes), and "on his legs and body." He said that he operated alone even when confronted with the fact that other suspects were arrested. When he got to the "truck," that belonged to a friend that he knew only by a first name, an unknown man put a gun to his head. He did not believe that he was a deputy, nor was he told anything by the deputies before he entered the van. He noticed no badges, but he did remember that the deputies were wearing green shirts. He said that he was nervous when he saw the gun and that is why he drove off, but he did not try to run over anyone. He stopped his vehicle when he saw the "lights," and he said that his door never opened as he drove away. Ruiz initially said that he knew nothing of the shooting and then started describing the man that put the gun to his head as the "Officer with the gun." Ruiz ultimately said that he stole the jeans because "they shot at him."

A search of the van driven by Ruiz revealed four pair of black Levi Jeans from the right front passenger seat. Four duffel bags were recovered from the rear of the van. The bags contained more clothing. Kohl's personnel indicated that the Levi Jeans were taken from their store, but they could not confirm if those items found in the duffel bags were taken from the store.

A witness that refused to be identified said that he/she saw Ruiz' van drive away from the deputy in the parking lot, narrowly missing pedestrians. This witness saw a deputy chasing the van, but did not witness the shooting.

[redacted] is Kohls' loss prevention supervisor and she operated the parking lot video camera that captured Ruiz walking to the van, as well as Sergeant Wyman's actions. She indicated that she was talking to Detective Finn as Ruiz walked to the van. She believed that the van sort of took the deputy with him. [redacted] is also a Kohls' loss prevention officer and he indicated that he walked away from the monitor to find the remaining suspects when Sergeant Wyman confronted Ruiz at the van. [redacted] however, wrote a report which implied that he observed Ruiz' van drag Sergeant Wyman before the shooting.

Investigators noticed that Ruiz' left rear passenger's sliding door window was shattered by an apparent bullet strike. The driver's rear view mirror glass was shattered and cracked in numerous places.

Investigators were unable to determine the path of travel of the bullet due to the large hole in the window. Bullet jacket fragments were found on the driver's side floorboard and on top of the driver's seat.

The parking lot video depicts the scene around Ruiz' van as described by Finn and Wyman. It has no sound. Fortunately, the video is time stamped. The shooting occurred within seconds of Sergeant Wyman coming upon the van. A detailed analysis of what occurred in the Kohls' parking lot can only be achieved when the video is advanced frame by frame:

At approximately 1:54:57, Ruiz emerged from Kohls and casually walked to the van. He entered his van and closed the door at approximately 1:55:22. It does not appear that Ruiz ever looked to the back or to the side as he was entering his vehicle, although the camera panned away from Ruiz for approximately ½ second before he closed his door. It appeared that Ruiz was making motions similar to someone beginning to start their vehicle. At approximately 1:55:25, Sergeant Wyman and Detective Finn approached the van and Finn went to the passenger's side where his appearance was mostly obstructed due to the camera's vantage point. Both deputies appeared to be wearing green pull over shirts that had the word "Sheriff" in large letters on the back. Wyman immediately, and forcefully, wrapped on the driver's side window with his left hand. In his right hand was his gun which was pointed at Ruiz. Ruiz' van appears to start to go forward, and at that point, Wyman's left hand appeared to grab the driver's side door handle. Wyman moved slightly to his left, and then he let go of the door handle. The driver's door opened. At approximately 1:55:29, Wyman raised his right hand and appeared to fire his gun in Ruiz' direction. The driver's door was still open. When Wyman fired his gun, he was standing, more or less, closer to the van's rear left (driver's) side. It cannot be determined from the video tape how far Wyman was from the van when he fired his gun; however, it appeared that he was a very short distance away. Likewise, it cannot be determined how close he was to the van parked opposite of Ruiz' van and one stall over (to the left) when he fired his gun, but it would appear that he was a short distance away. It is difficult to determine if Ruiz turned his front wheels to the left as he drove off. His van did appear to drive over a raised curb. Ruiz closed the driver's door when he got over the curb, turned right, and sped away. Wyman's and Finn's patrol car never came into view before the shooting.

CONCLUSION

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears that the person claiming the right of self-defense or the defense of another actually and reasonably believed that he was in imminent danger of great bodily injury or death. *People v. Williams* (1977) 75 C.A.3d 731.

In protecting himself or another, a person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions--Criminal (CALJIC) 5.30 and 5.32.

If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. Actual danger is not necessary to justify the use of deadly force in self-defense. The right of self-defense is the same whether the danger is real or merely apparent. *People v. Toledo* (1948) 85 C.A.2d 577.

"The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-- in circumstances that are tense, uncertain and rapidly evolving--about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397, 104 L.Ed.2d 443, 109 S.Ct. 1865.

Ruiz' statements regarding the deputies' actions are untrustworthy. It is not unreasonable to conclude that Ruiz was told to stop before he entered his van, despite the fact that he never turned around. Ruiz indicated that he never heard that statement. His credibility could be considered questionable, however, when one considers why he was at Kohl's Department Store in the first place and the fact that he set off their audible alarm when he exited. His admission that he stole the jeans and denial that Wyman and Finn were "Officers" despite the way they were dressed, further damages his credibility.

The presence of the deputies at Ruiz' van was reasonable and lawful under these circumstances. Although Marcelo Ruiz appeared to be only a professional shoplifter, it is not unreasonable to conclude that his team devised a plan for confrontations with law enforcement. As such, it is not unreasonable to believe that it was still necessary to approach Ruiz with guns drawn. Ruiz made no effort to exit his vehicle when confronted by the deputies. His statement that he did not know who the deputies were, despite their dress and knowing that he just stole merchandise from Kohls, is not credible. Arguably, Ruiz' actions escalated this confrontation as well.

Hence, the holding in *Graham v. Connor* is most instructive here. In this rapidly evolving situation, Sergeant Wyman indicated that he grabbed the door handle before the van started to move. It appeared from the tape that Sergeant Wyman was incorrect, in that he chose to grab the door handle after the van started moving and thereby increased the peril he faced. Under these circumstances, with 20/20 vision of hindsight, it may have been ill advised to grab the driver's door handle, however, it was not unlawful.

Whether Sergeant Wyman was being dragged by Ruiz' van after he grabbed the door handle is debatable. Advancing the video tape frame by frame does not yield a definitive answer either way. Nevertheless, based on these facts, a trier of fact may conclude that Sergeant Wyman's split second decision to use deadly force was lawful because he reasonably believed that his life was in danger. Furthermore, Sergeant Wyman could argue that he was also concerned for the safety of Detective Finn who was on the other side of the van, and used deadly force in defense of Finn's life. As the van pulled away, it appeared that Finn could not be observed by Wyman. A trier of fact might decide that it was reasonable for Wyman to conclude that Finn was also in danger of being struck or dragged off by Ruiz as he pulled away in his attempt to flee.

In viewing the video tape reasonable minds could reach different conclusions about Sergeant Wyman's actions. Thus, based on all of the above factors, it cannot be said that the sergeant's actions were criminal beyond a reasonable doubt.

Therefore, it is the conclusion of this office that there is insufficient evidence to prove Sergeant Wyman unlawfully fired his weapon at Marcelo Ruiz. We are closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By [signature]

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c: Sergeant Donald Wyman, #[redacted]